

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN - 4 2008  
Federal Communications Commission  
Office of the Secretary

In the Matter of ) WT Docket No. 08-20  
)  
WILLIAM F. CROWELL ) FCC File No. 0002928684  
)  
Application to Renew License for Amateur ) File No. EB-08-IH-0434  
Radio Service Station W6WBJ )

To: Administrative Law Judge  
Arthur I. Steinberg

**ENFORCEMENT BUREAU'S MOTION TO COMPEL RESPONSES TO ITS  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

The Enforcement Bureau (the "Bureau"), pursuant to 47 C.F.R. § 1.325, moves for an order compelling William F. Crowell ("Crowell") to produce documents which he has withheld from production. In support hereof, the Bureau states as follows:

1. On May 19, 2008, the Bureau filed its First Request for Production of Documents ("Document Request" or "Request"), attached hereto as Exhibit A. Crowell's response to the Document Request was due on May 29, 2008.

2. On May 28, 2008 Crowell served his Responses and Objections to the Enforcement Bureau's First Request for Production of Documents ("Response") on the Bureau. The Response is attached hereto as Exhibit B.

3. The Response raised numerous, meritless, vague, and overbroad objections which should be rejected outright, and Crowell should be ordered to respond to the Requests. Moreover, the Responses Crowell did provide are deficient, and Crowell should be ordered to respond more fully and completely.

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4. On June 4, 2008, prior to filing this pleading, the Bureau contacted Crowell in an effort to informally resolve the matters raised in this Motion. Crowell refused to withdraw any of his stated objections. He further refused to supplement his incomplete (and improperly labeled) production. Despite the parties' good faith attempt, such efforts were unsuccessful as the parties were unable to resolve their differences.

**A. Crowell's Objections to the Bureau's First Request For Production of Documents Should be Overruled, and He Should Be Ordered to Produced All Non-Privileged, Responsive Documents In His Possession, Custody, and/or Control**

The Hearing Designation Order ("HDO") in this proceeding<sup>1</sup> directed the Presiding Judge to determine: (1) whether Crowell intentionally interfered with and/or otherwise interrupted radio communications; (2) whether Crowell transmitted one-way communications on amateur frequencies; (3) whether Crowell transmitted indecent language; (4) whether Crowell transmitted music; (5) whether Crowell is qualified to be and remain a Commission licensee; and (6) whether Crowell's renewal application should be granted. *See* HDO at ¶ 10. The HDO made clear that Crowell's basic character was central to the Presiding Judge's analysis of this case. *See id.* at ¶ 6. In discussing the requirement that an applicant for an FCC license be of good character, courts have stated that "[a] person's 'character' is usually thought to embrace all his qualities and deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc. which distinguish him as a human being from his fellow men . . . His disposition toward criminal acts is only one of the qualities which constitute his character. The statute subjects an applicant's 'character' to scrutiny by the Commission; in the absence of a legislative directive to the narrow interpretation advanced by plaintiffs, courts must give to words their commonly understood definitions.

. . Inquiry into an applicant's character, as commonly understood, would certainly be material. An inquiry which concerned itself only with convictions for felony or of crimes involving moral turpitude would be grossly inadequate. It might indeed be most inadvisable from the public viewpoint to entrust the operation of a radio station to a person unworthy of belief and evidencing disregard for regulatory laws, even though he had never been convicted of a felony.”<sup>2</sup>

Prior to release of the HDO, the Commission received numerous complaints over the course of several years about Crowell's conduct as an amateur radio operator, both on and off the air. These complaints alleged, among other things, that Crowell repeatedly “jammed” amateur communications, harassed other amateur radio operators on the air and over the internet, and generally engaged in conduct involving a blatant disregard and disrespect for Commission rules and Commission employees. The Bureau served discovery on Crowell tailored to the issues designated in the HDO. Instead of responding in any meaningful way, Crowell essentially failed and refused to respond. Crowell submitted what purports to be legal argument (without citation or substantiation) in the form of objections to each and every one of the Bureau's Requests. Such "objections" are not well founded and lack any basis in law or in fact. Crowell's objections should be overruled and he should be ordered to respond to the Bureau's Requests and to produce non-privileged, responsive documents immediately.

**1. The Enforcement Bureau's Objections to Crowell's Discovery Does Not Permit Him to Refuse to Respond**

Crowell objected to every one of the Bureau's Requests by raising the following objection:

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<sup>1</sup> *William F. Crowell*, Hearing Designation Order, 23 FCC Rcd 1865 (WTB, rel. Feb. 12, 2008).

Applicant objects to this Request on the ground that the Enforcement Bureau presently has not the right to conduct discovery herein because it has violated the priority of discovery which was established by Applicant with his First Set of Interrogatories propounded to the Enforcement Bureau, to which the Bureau has objected in bad faith, has largely refused to answer, and as to which there is pending Applicant's Second Motion to compel the Bureau to answer same. Applicant has been wrongfully prevented from formulating his claims and defenses herein due to the Enforcement Bureau's said bad faith in discovery.

Applicant's Response and Objections to Enforcement Bureau's First Request for Production of Documents ("Response") at No. 1; *see also id.* at Nos. 2-22. This objection has no legal basis, and Crowell offers no case law or rule to support it.

The Bureau stands by the objections it raised in response to Crowell's First Set of Interrogatories. In response to the Bureau's objections, Crowell filed a Motion to Compel which the Bureau opposed. That Motion has been fully briefed and is currently pending before the Administrative Law Judge. If the Bureau is ordered to respond to Crowell's discovery, the Bureau will comply. Crowell cannot be permitted to refuse to respond to well-formed discovery in the interim. His objections to each and every one of the Bureau's Requests should be rejected, and Crowell should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**2. The Bureau Need Not Make a Preliminary Showing of Crowell's Violation of Part 97 Prior to Conducting Discovery**

Crowell objected to each Request by raising the following objection: "Applicant further objects to this Request on the ground of lack of foundation, in that the Enforcement Bureau lacks the authority to compel the production of evidence before it has made a preliminary showing that it has actual intercepts evidencing a violation of Part 97." *Id.* at No. 1; *see also id.* at Nos. 2-22. This objection has no legal basis and Crowell offers no case law or rule to support it. No such burden or condition precedent to conducting discovery exists. Moreover, it is important to point

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<sup>2</sup> *See Mester v. U.S.*, 70 F.Supp. 118 (D.C. Cir. 1947). *See also*

out that Crowell, as the applicant, bears the burden of proof on each of the issues raised in the HDO. *See* 47 C.F.R. § 1.254. Crowell's objections to each of the Bureau's Requests should be rejected, and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**3. The Bureau Need Not Show a Part 97 Violation Prior to Conducting Discovery**

Similar to the objection discussed in paragraph A2, above, Crowell objects to Request Number 3 on the ground that "the Enforcement Bureau has waived the right to, and is estopped from, conducting any discovery or presenting any evidence concerning mere complaints absent a preliminary showing that the complaint in question actually constitutes a Part 97 violation." Response at No. 3. This objection has no legal basis and Crowell offers no case law or rule to support it. No such burden or condition precedent to conducting discovery exists and Crowell's objection should be rejected. Moreover, it is Crowell who will bear the burden of proof at the hearing. *See* 47 C.F.R. § 1.254. Crowell's objection should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**4. Crowell's Purported Reliance on a Statement Allegedly Made By Riley Hollingsworth Does Not Estop the Bureau From Conducting Discovery**

Crowell objects to Request Number 3 on the ground that:

[T]he Enforcement Bureau has waived the right to, and is estopped from, conducting any discovery or presenting any evidence concerning Applicant's alleged entrance into existing QSOs because Riley Hollingsworth had previously advised Alan Strauss, WA4JTK, that he interpreted Sec. 97.101(b) as requiring amateurs to share the frequency in such circumstances, and Applicant relied upon Hollingsworth's said interpretation.

Response at No. 3. This objection has no legal basis and Crowell offers no case law or rule to support it. Moreover, in setting forth his "objection" Crowell is actually presenting what purports to be an argument on the merits of the issues raised in the HDO. Such argument, even if factually or legally substantiated (which the Bureau contends it is not), provides no rationale or basis to preclude the Bureau from conducting discovery on the issues set forth in the HDO. The standard for discovery, which supports the Bureau's ability to seek discovery, is well-settled: "It is not ground for objection . . . that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence." 47 C.F.R. § 1.311(b). Crowell's objection should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**5. The Bureau May Seek Discovery Regarding Complaints About Crowell's Conduct As An Amateur Radio Operator**

Crowell purports to object to Request Numbers 4 and 5 on the ground that "mere complaints are irrelevant and immaterial as inadmissible in evidence under 47 U.S.C. § 154(f)(4)(B) because they were not prepared by members of the amateur auxiliary." Response at Nos. 4; *see also id.* at No. 5. This objection has no legal basis and Crowell offers no case law or rule to support it. Moreover, in setting forth his "objection" Crowell is actually presenting what purports to be an argument on the merits of the issues raised in the HDO. Such argument, even if factually or legally substantiated (which the Bureau contends it is not), provides no rationale or basis to preclude the Bureau from conducting discovery on the issues set forth in the HDO. The standard for discovery, which supports the Bureau's ability to seek discovery, is well-settled: "It is not ground for objection . . . that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence."

47 C.F.R. § 1.311(b). By the Requests at issue, the Bureau seeks information that is calculated to lead to the discovery of information pertaining to Crowell's conduct and character as an amateur radio operator. The information sought relates directly to the designated issues. Crowell's objection should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**6. The Bureau May Conduct Discovery With Respect to Crowell's Activities on the Internet**

Crowell objects to Request Numbers 6, 7, and 12 on the ground that "the Commission lacks the authority to compel the production of such evidence because it has neither subject matter nor ancillary jurisdiction over the internet." Response at No. 6; *see also id.* at Nos. 7, 12. Crowell ignores the standard for discovery. As previously noted, the standard for discovery is well-settled: "It is not ground for objection . . . that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence." 47 C.F.R. § 1.311(b). By the Requests at issue, the Bureau seeks information that is calculated to lead to the discovery of information pertaining to Crowell's conduct and character as an amateur radio operator. The information sought relates to Crowell's pattern of conduct and, as such, goes to his reliability as a Commission licensee. Crowell's objection should be rejected, and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**7. The Bureau Should Not Be Precluded From Conducting Discovery Regarding Crowell's Internet Activities**

In response to Request Numbers 6, 7, and 12, Crowell objects on the ground that "the Enforcement Bureau has waived the right to, and is estopped from conducting any discovery or presenting any evidence concerning Applicant's internet activities because Riley Hollingsworth

repeatedly and specifically advised the amateur community to keep any disputation and questionable materials off the ham radio and put them on the internet instead." Response at No. 6; *see also id.* at Nos. 7, 12. This objection has no legal basis and Crowell offers no case law or rule to support it. Moreover, Crowell once again ignores the standard for discovery and seemingly mistakes that which may be introduced as evidence at the hearing (in this instance, what he argues, without substantiation, may not be admissible) versus that which is permissibly discoverable. The Bureau may request, and Crowell must provide, information so long as it is "reasonably calculated to lead to the discovery of admissible evidence." 47 C.F.R. § 1.311(b). The Bureau is requesting information that is calculated to lead to the discovery of information pertaining to Crowell's conduct and character as an amateur radio operator. Crowell's objection should be rejected, and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

#### **8. Crowell Must Produce Documents Prepared by the Commission**

In his response to Request Number 9, Crowell objects to producing documents that, he argues, are presumptively within the Bureau's possession. Because Crowell does not identify the responsive documents in his possession, the Bureau is unable to respond with specificity to his argument that each such document is within the Bureau's possession. While the requested documents may have been distributed by, or on behalf of, the Commission, the documents may have originated from a Bureau, Division, or office of the Commission other than the Enforcement Bureau, or from an outside entity. Such documents may be currently unavailable and unknown to the Bureau. Regardless, such documents are reasonably calculated to lead to the discovery of admissible evidence and may be directly admissible as evidence in this case, consequently, they are subject to discovery under Section 1.311(b) of the Commission's rules.



Crowell's objection should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**9. Crowell's Constitutionality Argument Is Not A Proper Basis For an Objection to the Bureau's Discovery Request**

In response to Request Numbers 10-12 and 14 Crowell poses an argument, seemingly on the merits of his renewal application, which is inappropriate and should be rejected at this time.

Specifically, Crowell objects to the Bureau's Discovery Requests claiming:

[T]he Commission may not deny a license based upon an unconstitutional premise. It would represent a violation of Applicant's free-speech rights for the Commission to review any speech by Applicant that does not violate Part 97, as well as a denial of Applicant's first amendment right to petition the government for redress of grievances. Nowhere in Part 97 does the Commission specify any impermissible subjects of amateur conversation, and every attempt to amend Part 97 so as to specify any such impermissible subjects of discussion has failed. Therefore radio amateurs have the same full range of free-speech rights on the air as any U.S. citizen has in private conversation, and any attempt by the Commission to deny Applicant's renewal based upon a *post facto* review of Applicant's speech violates his First Amendment rights. This rationale applies *a fortiori* to off-the-air statements, such as those sought in this Request.

Response at No. 10; *see also id.* at Nos. 11, 12, 14.

In his "objection," Crowell appears to present what purports to be an argument on the merits of the issues raised in the HDO. Such argument, even if factually or legally substantiated (which the Bureau contends it is not), provides no rationale or basis to preclude the Bureau from conducting discovery on the issues set forth in the HDO generally or in the specifically identified Requests (numbers 10-12 and 14). That the Bureau has wide latitude in what it may seek in discovery is well-settled, and the standard has been set out several times above. *See* 47 C.F.R. § 1.311(b). By the Requests at issue, the Bureau seeks information that is calculated to lead to the discovery of information pertaining to Crowell's conduct and character as an amateur radio

operator. Crowell's objection should be rejected, and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**10. Crowell's Refusal to Respond to Requests Regarding Commission Employees Is Improper**

The Bureau seeks information regarding pictures and songs Crowell has written about the Commission and/or any Commission employee. *See* Request Nos. 12, 14. Instead of responding, Crowell objects on the following, nonsensical ground:

Insofar as the Request demands information pertaining to any Commission employee, Applicant objects that it improperly equates, and therefore confuses, the actions of Riley Hollingsworth with the actions of the Commission. They are not the same, because Hollingsworth does not speak for the Commission. . . Therefore, whether or not Applicant has posted any pictures of Riley Hollingsworth on the internet is irrelevant to the issue of whether or not Applicant respects and follows the Commission's Rules.

Response at No. 12; *see also id.* at No. 14.<sup>3</sup> This purported objection has no legal basis, and Crowell offers to case law or rule to support it. Moreover, Hollingsworth is, in fact, a Commission employee, and Crowell's purported argument about what authority he does or does not have has no bearing on the Requests at issue. Crowell once again ignores the standard for discovery. The Bureau may request, and Crowell must provide, information so long as it is "reasonably calculated to lead to the discovery of admissible evidence." 47 C.F.R. § 1.311(b). The Bureau is requesting information that is calculated to lead to the discovery of information pertaining to Crowell's conduct and character as an amateur radio operator. Crowell's objection should be rejected, and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

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<sup>3</sup> It should be pointed out the Crowell's rationale for failing and refusing to respond to Request Numbers 12 and 14 is contrary to the "objections" he raises in support of his failure to respond to Requests numbers 3, 6, and 7. On the one hand Crowell argues that he relied on Hollingsworth's purported actions and statements, *see* Response at Nos. 3, 6, 7, 12, and on the other hand he says that Hollingsworth does not speak for the Commission, *see* Response at Nos. 12 and 14.

**11. Crowell Should Be Compelled to Provide Information Regarding His Transmission(s) of Indecent Language**

In response to a Request regarding Crowell's willful and/or repeated transmission of indecent language, Crowell objects and fails to provide responsive information on the ground that "the Commission has no authority to regulate indecency in the amateur service because the licensee receives nothing of value with the license grant, so there is no *quid pro quo* for any alleged waiver of the licensee's free-speech rights in exchange for the license grant." Response at No. 19. Crowell also objects on the ground that "the Commission has illegally failed to grant amateur radio operators a 'safe harbor' when they can utter so-called 'indecent' language." *Id.*

These objections have no legal basis and Crowell offers no case law or rule to support them. Moreover, in setting forth his "objections" Crowell is actually presenting what purport to be arguments on the merits of the issues raised in the HDO. Such arguments, even if factually or legally substantiated (which the Bureau contends they are not), provide no rationale or basis to preclude the Bureau from conducting discovery on the issues set forth in the HDO. The standard for discovery, which supports the Bureau's ability to seek discovery, is well-settled, *see* 47 C.F.R. § 1.311(b), and has previously been recited in this Motion. By the Request at issue, the Bureau seeks information that is calculated to lead to the discovery of information pertaining to Crowell's conduct and character as an amateur radio operator. Crowell's objections should be rejected, and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

**12. Crowell's Objections to the Relevancy of the Discovery Materials Requested by the Bureau are Without Merit**

Crowell objects to the relevancy of Bureau Request Nos. 3-7 and 9-14. His objections are in four forms:

(1) Objections on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein. *See* Objections to Requests 3–7.

(2) Objections on the basis that it is irrelevant, not calculated to lead to the discovery of admissible evidence [and overbroad], absent a limitation or a preliminary showing by the Enforcement Bureau that the complaint in question constitutes a Part 97 violation. *See* Objections to Requests 3-5, 9.

(3) Objections on the grounds that mere complaints are irrelevant and immaterial as inadmissible in evidence under 47 U.S.C. §154(f)(4)(B) because they were not prepared by members of the amateur auxiliary. *See* Objections to Requests 4, 5.

(4) Objections on the basis that the Commission lacks the authority to compel the production of such evidence because it has neither subject matter nor ancillary jurisdiction over the internet. *See* Objections to Requests 6, 7, 12.

Crowell fails to provide any specific reasons or legal citations to justify these relevancy objections to the Bureau's Requests. The HDO in this proceeding specifies an issue, among others, to determine whether Crowell is basically qualified to be a Commission licensee. Crowell's remarks, writings, and actions -- whether on the air or off -- may provide evidence concerning his patterns of conduct, his character, and may lead to the discovery of important witnesses. Accordingly, these inquiries and requests for such evidence are implicitly calculated to lead to the discovery of admissible evidence and, as such, constitute permissible discovery. As discussed below, each of these relevancy objections should be rejected and Crowell should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

a. Request No. 3 seeks: To the extent not provided in response to the preceding Requests, all documents which you or anyone on your behalf submitted and/or received from the Commission with respect to your conduct as an amateur radio operator. Crowell objects to this Request on the basis that it is irrelevant, not calculated to lead to the discovery of admissible

evidence and overbroad, absent a limitation any complaints against Applicant constitute a Part 97 violation.

Documents submitted to the Commission by Crowell and his agents regarding Crowell's conduct as a licensee, and documents received by Crowell and his agents from the Commission regarding his conduct as a licensee, are directly relevant to the issues in this case. It is likely that the documents requested will be admissible at the hearing but, per Section 1.311(b) of the Commission's rules, it is only necessary that the documents be reasonably calculated to lead to the discovery of admissible evidence to be subject to a discovery request. Accordingly, Crowell should be directed to response to this Request.

b. Request No. 4 seeks: All documents which discuss, describe, refer to, or evidence any complaint, criticism, and/or negative comments regarding your conduct as an amateur radio operator, whether submitted to the Commission or not. Crowell objects to this Request on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence" and further objects on the ground that said Request is "irrelevant and not calculated to lead to the discovery of admissible evidence, absent a preliminary showing by the Enforcement Bureau that the complaint in question constitutes a Part 97 violation.

Crowell's relevancy arguments are without merit. Complaints and criticisms sent to Crowell about his conduct as an amateur radio operator are relevant to the issues in this proceeding. This Request is calculated to discover complainants, witnesses, and others who may have information about Crowell's conduct as an amateur radio operator. Such information may identify additional witnesses to Crowell's known violations of the Commission's amateur rules. All such information should be provided. Crowell should not be allowed to make a judgment call regarding what information to provide. There is no legal requirement that responsive

complaints “constitute a Part 97 violation.” as Crowell contends. Crowell offers no case law or rule to support such contention. No such burden or condition precedent to conducting discovery exists. Moreover, Crowell, as the applicant, bears the burden of proof on each of the issues raised in the HDO. *See* 47 C.F.R. § 1.254. Accordingly, Crowell should be directed to fully respond to this Request.

c. Request 5 seeks: To the extent not produced in response to the preceding Request, all documents which discuss, describe, refer to, or evidence any communication between and/or among you and any other amateur radio operators regarding your conduct as an amateur radio operator. Crowell objects to this Request on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein. Applicant further objects hereto on the ground that said Request is irrelevant and not calculated to lead to the discovery of admissible evidence, absent a preliminary showing that a specific complaint constitutes a Part 97 violation. Applicant further objects that mere complaints are irrelevant and immaterial as inadmissible in evidence under 47 U.S.C. §154(f)(4)(B) because they were not prepared by members of the amateur auxiliary.

Crowell’s objection to this Request is without merit. The Request is designed to discover admissions by Crowell regarding his conduct as an amateur radio operator as well as additional facts, witnesses, and other admissible evidence regarding Crowell’s character. Accordingly, Crowell should be ordered to fully comply with this Request.

d. Request 6 seeks: All documents which discuss, describe, refer to, or evidence your having been banned from or otherwise asked or instructed to refrain from using an internet forum or website. Crowell objects to this Request on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein. Applicant

further objects on the basis that the Commission lacks the authority to compel the production of such evidence because it has neither subject matter nor ancillary jurisdiction over the internet.

Crowell's objection is without merit. The Commission will show that multiple internet sites are frequented by amateur radio operators to discuss their behavior and the on-air behavior of other radio operators that they encountered. Consequently, this Request is designed to discover admissible evidence and witnesses regarding Crowell's conduct as an amateur radio operator; additional witnesses, facts, and admissible evidence regarding Crowell's conduct as an amateur radio, admissions by Crowell regarding his conduct as a radio operator, and character evidence regarding Crowell's conduct as a radio operator.

e. Request 7 seeks: All documents which discuss, describe, refer to, or evidence your having registered or signed up other amateur radio operators to receive pornographic email or other pornographic material. Crowell objects to this Request on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein. Crowell further objects on the basis that the Commission lacks the authority to compel the production of such evidence because it has neither subject matter nor ancillary jurisdiction over the internet.

Crowell's objection to this Request is without merit. This interrogatory is designed to discover admissible evidence regarding Crowell's interactions with other amateur radio operators, to discover and identify witnesses to Crowell's conduct as an amateur radio operator, and to discover admissible character evidence regarding Crowell's conduct toward other amateur radio operators and listeners.

f. Request 9 seeks: All press releases or other notices you received from the Commission or anyone acting on its behalf regarding amateur radio operation. Crowell objects to

this Request on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein. Applicant also objects to this Request on the grounds that it is irrelevant and not calculated to lead to the discovery of admissible evidence, especially absent a preliminary showing that the Enforcement Bureau has actual intercepts of Applicant committing a Part 97 violation.

Crowell's objections are without merit. The documents requested are directly relevant to the issues presented. They provide to Crowell notice of Commission policies, rules, cases and concerns regarding amateur radio operations. Crowell's knowledge of such matters may be in issue in this case. Crowell's objections should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

g. Request 10 seeks: All writings, articles and/or compositions you have drafted regarding amateur radio, whether published or not. Crowell objects on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein.

It is the Bureau's belief that Crowell has documented his actions, thoughts, opinions and beliefs related to amateur radio in multiple written documents. Some of these documents have been published. Responsive documents include writings concerning his opinions of fellow amateur radio operators and Commission personnel connected to amateur radio regulation; written documentation and recitations of his actions related to such persons; and documentation of his on-air broadcasts, the equipment he uses during his broadcasts, songs that he has written regarding amateur-radio-related subjects, including persons connected to amateur radio; and the policies he promotes during his amateur radio broadcasts. Additionally, some documents may



contain admissions regarding his amateur radio operations. Such documents and information are directly related to the issues presented in this case. Crowell's objections should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

h. Request 11 seeks: All documents which discuss, describe, refer to, or evidence any writing, article, and/or composition you have drafted about amateur radio, whether published or not. Crowell objects to this Request on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein.

Crowell's objection is without merit. As stated in the prior discussion of Request 10, it is the Bureau's belief that Crowell has documented his actions, thoughts, opinions and beliefs related to amateur radio in multiple written documents. Some of these documents have been published. Responsive documents include writings concerning his opinions of fellow amateur radio operators and Commission personnel connected to amateur radio regulation; written documentation and recitations of his actions related to such persons; and documentation of his on-air broadcasts, the equipment he uses during his broadcasts, songs that he has written regarding amateur-radio-related subjects, including persons connected to amateur radio; and the policies he promotes regarding amateur radio broadcasts. Some documents may contain admissions regarding his amateur radio operations. Such documents and information are directly related to the issues presented in this case. Crowell's objections should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

i. Request 12 seeks: All pictures you have created and/or posted on the internet at [www.hamjamming.com](http://www.hamjamming.com), [www.eHam.net](http://www.eHam.net), or other website regarding the Commission, any

Commission employee, any Commission rules, and/or any amateur radio operator. Crowell objects to this Request on the grounds that the Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein.

Crowell's objection is without merit. Responsive materials may demonstrate Crowell's disregard for the Commission's personnel and regulations, may document violations of the Commission's rules by Crowell, may substantiate complaints received about Crowell's radio equipment and operations, and may lead to the identification of additional witnesses to Crowell's known violations of the Commission's rule. Crowell's objections should be rejected and he should be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

j. Request 13 seeks: A CD recording of each song you or anyone on your behalf or at your direction or request transmitted on any amateur radio frequency, in whole or in part, and a transcript thereof. Crowell objects to this Request on the grounds that it is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein.

Crowell's objection is without merit. Responsive recordings are directly relevant to the issues presented in this case. Responsive recordings may substantiate complaints received regarding Crowell's amateur radio operations. Crowell's objection should be rejected and he should be ordered to immediately produce all non-privileged, responsive CD recordings to the extent he has not already done so.

k. Request 14 seeks: All documents which describe, refer to, or evidence any song you have written or otherwise created or otherwise assisted in writing or creating regarding the Commission, and/or any Commission employee, and/or Commission rules regarding amateur radio and/or any amateur radio operator. Crowell objects to this Request on the grounds that the

Request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence herein.

Crowell's objection is without merit. Responsive documents are directly relevant to the issues presented in this case. Responsive documents may substantiate complaints received regarding Crowell's amateur radio operations, may identify sources where such recordings may be located, and may reveal the identities of previously unknown witnesses to Crowell's amateur radio operations. Crowell's objection should be rejected and he should be ordered to immediately produce all non-privileged, responsive CD recordings to the extent he has not already done so.

**B. The Responses and Documents Crowell Provided Are Deficient, and He Should Be Ordered to Fully and Completely Respond and Provide All Documents Within His Possession, Custody, and Control**

1. In response to Request Number 1, Crowell produced 21 documents. Many of the documents produced refer to attachments which were not provided. The Bureau respectfully requests that Crowell be ordered to produce such attachments and any other non-privileged, responsive information within his possession, custody, or control to the extent he has not already done so.<sup>4</sup>

2. Request Number 2 seeks documents Crowell submitted to and/or received from the Federal Communications Commission (the "Commission" or "FCC") relating to the matters set forth in the HDO. In response, Crowell submitted 3 documents (B-1, B-2, and B-3) none of which are responsive to the Request. The first, B-1, is an email from Orv Dalton to the "3830 group." Clearly, this is not an email submitted by Crowell to the FCC nor is it an email from the FCC to Crowell regarding his conduct as an amateur radio operator. The second and third

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<sup>4</sup> The Bureau specifically requested that these attachments be provided on June 4, 2008. Crowell refused to supplement his production.

documents, B-2 and B-3, appear to be emails to/from Hollingsworth, a Commission employee, to "Ben," an amateur operator. These documents are non-responsive to the Request for the same reason – they were not submitted by Crowell to the Commission nor were they submitted by the Commission to Crowell.

Because the documents submitted are non-responsive, the Bureau respectfully requests that the Judge order Crowell to produce non-privileged, responsive documents to the extent he has not already done so. If Crowell alleges he has provided responsive documents, the Bureau respectfully requests that Crowell be ordered to specifically identify which documents produced are, in fact, responsive to this Request.

3. Request Number 3 seeks documents "which [Crowell] or anyone on [his] behalf submitted and/or received from the Commission with respect to [his] conduct as an amateur radio operator." Crowell responded by restating his response to Request Number 2. As discussed in the preceding paragraph, this response is deficient as the documents produced are not, in fact, responsive to the actual Request.

Because the documents submitted are non-responsive, the Bureau respectfully requests that the Judge order Crowell to produce non-privileged, responsive documents to the extent he has not already done so. If Crowell alleges he has provided responsive documents, the Bureau respectfully requests that Crowell be ordered to specifically identify which documents produced are, in fact, responsive to this Request.

4. In response to Request Number 8, Crowell identifies and describes 3 documents, B-1 (a September 7, 2000 WorldRadio [sic] Online magazine article), B-2 (a September 7, 2000 RAIN report), and B-3 (a February 13, 2001 email from Orv Dalton). The documents, as

described, were not produced.<sup>5</sup> Crowell did produce documents bearing the labels B-1, B-2, and B-3, however these were produced in response to Request Number 2 and do not match the descriptions provided in his response to Request Number 8.<sup>6</sup>

The Bureau respectfully requests that the Judge order Crowell to produce non-privileged, responsive documents to the extent he has not already done so.

5. In Request Number 9, the Bureau seeks "press releases or other notices [Crowell] received from the Commission or anyone acting on its behalf regarding amateur radio operation." In response, Crowell produced four documents, labeled C-1 through C-4, none of which were prepared or published by the Commission: (1) a February 14, 2000 article from the RAIN report; (2) an article from the June 2000 issue of SEMARA Signal newsletter; (3) an Article from the May 2000 Feedline newsletter; and (4) a May 19, 2000 article from the ARRL newsletter. These documents are not responsive to the Request at issue or any other Request.

Because the documents submitted are non-responsive, the Bureau respectfully requests that the Judge order Crowell to produce non-privileged, responsive documents to the extent he has not already done so. If Crowell alleges he has provided responsive documents, the Bureau respectfully requests that Crowell be ordered to specifically identify which documents produced are, in fact, responsive to this Request.

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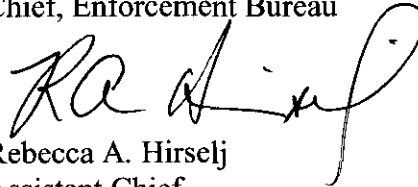
<sup>5</sup> What Crowell describes as B-3 in response to Request Number 8 may be what was produced as B-1 and identified in his response to Request Number 2.

<sup>6</sup> During the June 4, 2008 call, the Bureau brought this discrepancy to Crowell's attention. It is unclear if he intends to supplement or otherwise correct his improper production.

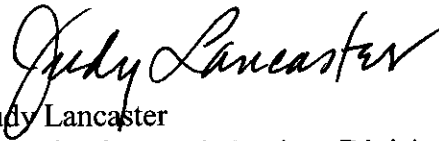
## **CONCLUSION**

For the foregoing reasons, The Bureau respectfully requests that its Motion be granted, Crowell's objections be overruled, and Crowell be ordered to immediately produce all non-privileged, responsive documents to the extent he has not already done so.

Respectfully submitted,  
Kris Anne Monteith  
Chief, Enforcement Bureau



Rebecca A. Hirselj  
Assistant Chief  
Investigations and Hearings Division



Judy Lancaster  
Investigations and Hearings Division

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

June 4, 2008

**CERTIFICATE OF SERVICE**

I, Kerri Johnson, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, hereby certify that on this 4<sup>th</sup> day of June, 2008, true and correct copies of the foregoing document, Enforcement Bureau's Motion to Compel Responses to First Request for Production of Documents, were served via email and first-class mail, postage prepaid, upon the following:

William F. Crowell  
1110 Pleasant Valley Road  
Diamond Springs, CA 95619-9221  
Email to: [retroguybilly@gmail.com](mailto:retroguybilly@gmail.com)

Administrative Law Judge Arthur I. Steinberg \*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Suite 1-C768  
Washington, D.C. 20054

  
\_\_\_\_\_  
Kerri Johnson

\* Hand-Delivered

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FILED/ACCEPTED  
MAY 19 2008  
Federal Communications Commission  
Office of the Secretary

In the Matter of	)	WT Docket No. 08-20
	)	
<b>WILLIAM F. CROWELL</b>	)	FCC File No. 0002928684
	)	
Application to Renew License for Amateur	)	File No. EB-08-IH-0434
Radio Service Station W6WBJ	)	

To: William F. Crowell

**ENFORCEMENT BUREAU'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS**

The Enforcement Bureau ("Bureau"), pursuant to Section 1.325 of the Commission's Rules, 47 C.F.R. § 1.325, hereby requests that William F. Crowell ("Crowell") produce the documents specified herein for inspection and copying. Production shall be made at the offices of the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Suite 4-C330, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554 (or at some other location that is mutually acceptable to the Bureau and Crowell) within 10 days of the date of this request.

**Definitions and Instructions**

- a. As used herein, the term "William F. Crowell," "Crowell," and/or "you" means William F. Crowell, the Amateur Radio Operator and Licensee of Amateur Radio Service Station W6WBJ (formerly N6AYJ), FRN No. 0014454912 and/or anyone acting at the request of or on behalf of William F. Crowell.
- b. "Document" means the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on



the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, videotaped, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any book, pamphlet, periodical, contract, agreement, correspondence, letter, facsimile, e-mail (including, but not limited to, any and all attachments thereto), file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, personnel file, personnel folder, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form) in the possession, custody, or control of Crowell.

c. "Relate to" and "relating to" mean constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, concerns or in any way is pertinent to the specified subject, including documents concerning the preparation of the documents.

d. "All" shall be construed to include the word "any."

e. The term "identify" when used with reference to a person or persons, means to state his or her full name; last known business and residence addresses; last known business and residence telephone numbers; and all known email addresses for each person.

f. The term "identify" when used with reference to a document means to state the full name, business address, resident address, home phone number, business phone number and all known email addresses of each person who wrote and prepared the document and each